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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/616,843	07/14/2000	Peter Nash	C150.12.3B	6411

7590 04/28/2004

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EXAMINER

HUYNH, PHUONG N

ART UNIT PAPER NUMBER

1644

DATE MAILED: 04/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/616,843

Applicant(s)

NASH ET AL.

Examiner

Phuong Huynh

Art Unit

1644

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 September 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 23 July 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.Claim(s) objected to: None.Claim(s) rejected: 14-16, 19-24 and 27-32.Claim(s) withdrawn from consideration: None.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

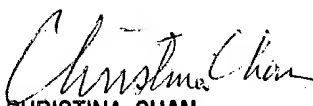
Continuation of 3.

Applicant's reply has overcome the following rejection(s): The enablement, written description and new matter rejections of claims 14-16, 19-24 and 27-32 are hereby withdrawn in view of the after Final admendment filed 9/23/03.

Continuation of 5. does NOT place the application in condition for allowance because:

Claims 14-16 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat No. 5,080,895 (of record, Jan 1992; PTO 1449) in view of Krause et al (of record, Appl Environ Microbiol 62(3): 815-21; 1996, PTO 892), US Pat No 5,585,098 (Dec 1996, PTO 1449) and US Pat No 5,741,489 (April 1998, PTO 892) for the same reasons of record.

Claims 17-24 and 27-32 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat No. 5,080,895 (of record, Jan 1992; PTO 1449) in view of Krause et al (of record, Appl Environ Microbiol 62(3): 815-21; 1996, PTO 892), US Pat No 5,585,098 (Dec 1996, PTO 1449) and US Pat No 5,741,489 (April 1998, PTO 892) as applied to claims 14-16 above and further in view of US Pat 6,086,878 (of record, Jul 2000, PTO 892) and US Pat No. 4,166,867 (of record, Sept 1979, PTO 892) for the same reasons of record.

  
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